

**Department of Health
TennCare Bureau**

**TennCare Bureau's Alleged Improper Changes to
External Survey Report**

January 1999

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The Honorable Don Sundquist, Governor

and

Members of the General Assembly

State Capitol

Nashville, Tennessee 37243

and

The Honorable Nancy Menke, Commissioner

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Ladies and Gentlemen:

Transmitted herewith is a special report by the Division of State Audit on its review of allegations that TennCare Bureau staff made improper changes to a draft external survey report. The survey, called a focus survey, was a follow-up to the annual survey on the services of Tennessee Behavioral Health, Inc. (TBH), which had been released by First Mental Health, Inc. (First Health) in September 1997. Members of the External Quality Review Organization (EQRO), who are staff of First Health, conducted the survey in March 1998. The state contracts with First Health to evaluate the quality management system and the quality of health care that TennCare enrollees receive. The allegations were as follows: (1) Changes were made to the survey team's draft. (2) To bring about the changes, TennCare Bureau staff exerted undue influence to the extent of compromising the concept of an independent review contrary to provisions in First Health's contract with the state. (3) The final product, after the changes, would reasonably mislead third-party readers with regard to the nature and scope of the original findings.

As part of its review, Division of State Audit staff interviewed current and former EQRO survey team members, management-level staff at the Department of Health–TennCare Bureau and First Health, and the state's contact person with the federal Health Care Financing Administration (HCFA). TennCare Bureau staff interviewed included the current Chief Deputy Commissioner for the Department of Health and former TennCare Bureau Director, Ms. Theresa Lindsey; the then acting TennCare Bureau Director and TennCare Medical Director, Dr. Wendy Long; the then Director of Quality Assurance, Ms. Denise Kirsch; and the Manager for Behavioral Health Organization Quality Improvement, Ms. Annette Grossberg. It should be

noted that none of the interviewees identified the Commissioner of Health, as being involved in any way with reviewing, commenting on, or directing revisions to the EQRO draft survey report in question.

With reference to First Health, audit staff interviewed the Regional Vice President, Dr. Pate McCartney; the EQRO Director, Ms. Neda Lewis (now former director); and the Manager for Continuous Quality Management, Ms. Mary Hogan. At the time, Ms. Lewis was responsible for both the EQRO managed care organization (MCO) and behavioral health organization (BHO) surveys and Ms. Hogan was involved with the EQRO MCO surveys. Audit staff also reviewed the state's TennCare waiver from HCFA and its related guidelines, as well as the state contract between the Department of Health and First Health.

As can be expected with any review process relating to reading, commenting on, and revising a written draft report, the various individuals interviewed indicated differing levels of involvement in the review process itself and any associated meetings. State Audit staff determined that during April and May 1998, the TennCare Bureau's Director of Quality Assurance, Ms. Kirsch, did review the draft focus survey report and did suggest changes to First Health's EQRO Director, Ms. Lewis. Ms. Lindsey stated that she didn't recall any specifics about the draft focus survey report in question, but that she did recall being consulted on one issue relating to whether statistics relating to case managers should be deleted from the draft. Dr. Long stated that although she did not specifically recall reviewing the draft or discussing draft-related issues with other bureau staff, she may have been involved at least peripherally. Dr. Long advised the auditors that the suggested changes and communications with First Health staff regarding the suggested changes occurred primarily with the Director of Quality Assurance.

Ms. Lewis told the auditors that she agreed with the proposed changes. Later, Ms. Kirsch and Ms. Lewis, joined at various times by Ms. Grossberg and Ms. Hogan, met with the survey team manager and survey team members to revise the draft. Ms. Kirsch and Ms. Lewis stated that they thought the changes were made through consensus. However, several of the survey team members stated that they objected to the revisions because they believed some of the changes significantly altered several findings by presenting unfavorable information in a more favorable light, deflecting criticism away from the TennCare Bureau, and deleting relevant information.

A comparison of the draft focus survey report to the final report disclosed that some of the revisions in question could reasonably be considered by third-party readers to materially alter the meaning of five of the sixty-one findings with regard to shortcomings of the TennCare Bureau, TBH, and the TennCare Partners Program. Although the revisions may give the appearance of deliberate changes to a draft report to deflect criticism from the TennCare Bureau, no direct corroborative evidence was found to support the allegations that these changes were outside the boundaries of the contract, were intentionally deceitful, or the result of undue

influence. The changes should be considered in the context of the explanations provided by TennCare Bureau and First Health staff, the current reporting structure, and the role of the EQRO survey reports.

With regard to the changes in question, both TennCare Bureau and First Health staff acknowledged that (1) references to proposed policies and procedures and performance measures pending with the TennCare Bureau were removed and that (2) case management statistics were deleted. Both TennCare Bureau and First Health staff strongly denied that any of the changes were inappropriate. Moreover, TennCare Bureau staff stated that they had not exerted undue influence on First Health staff, and First Health staff denied that they were unduly pressured by TennCare Bureau staff. Both TennCare Bureau and First Health staff stated that no changes were intended to deflect criticism away from the TennCare Bureau.

TennCare Bureau staff's explanations for the revisions appear reasonable, given the structure and parameters established in the TennCare waiver, its related guidelines, and the state contract with First Health. First, starting with this focus survey report, the TennCare Bureau changed the format of the BHO focus survey reports to parallel the format of the MCO focus survey reports. Before September 1, 1997, the EQRO MCO component was under the purview of the TennCare Bureau, while the EQRO BHO component was under the purview of the Department of Mental Health and Mental Retardation. On September 1, 1997, the two components were consolidated under the TennCare Bureau. According to TennCare Bureau staff, format changes necessitated some revisions. Second, TennCare Bureau staff indicated that some revisions were suggested to ensure that the findings directly addressed the standards being reported on.

Third, TennCare Bureau staff stated that they regarded the focus survey as a report on TBH to the TennCare Bureau, not a report on the performance of the TennCare Bureau itself. Thus, in areas where the TennCare Bureau had already received information and was involved in taking action, such as reviewing proposed policies and procedures and performance measures, TennCare Bureau staff initiated language revisions to delete reference to the bureau.

Finally, with reference to the case management statistics, TennCare Bureau staff stated that they understood the statistics to be self-reported by TBH and unverified by the EQRO surveyors. They said that they thought it would be inappropriate to include unverified numbers in a focus survey report because such numbers would be misleading to third-party readers. TennCare Bureau staff also said that they had other much worse case management numbers that had resulted in the bureau's taking action to withhold monies from TBH as a penalty.

An additional issue noted during the review was that quality-of-care issues were not addressed in the TBH focus survey, although the guidelines delineate individual case review as one of the three types of activities to be included in external quality reviews. TennCare Bureau staff indicated that the EQRO reports at this time should be focused on the quality management

system at the BHOs, not the quality of care provided by the BHOs. The rationale was that quality management system and quality of care are on a continuum of areas to be reviewed. An aspect of the rationale is that the EQRO should start by reviewing the quality management system and proceed to quality-of-care concerns once the quality management system has been thoroughly reviewed and deficiencies corrected.

Although the contract between the state and First Health for EQRO surveys does not address reviews of drafts by the TennCare Bureau staff, the related guidelines for external quality reviews do provide bureau staff some latitude in the degree of their involvement in such reviews. However, the contract and the guidelines both indicate a need for a truly independent review. (In this regard, First Health's management stated that they did not consider their role as independent of the TennCare Bureau but rather that of a partner.) Neither the contract nor the guidelines specifically limit the extent of the changes TennCare Bureau staff are allowed to make. One could however presume that a review for factual accuracy would not affect the independence of the EQRO survey reports.

The controversy surrounding the EQRO focus survey report on TBH raises two principal areas of concern: (1) the appropriate structure for the EQRO function to ensure the external and independent role of the surveyors, and (2) the intended readership and scope of the survey reports. Also, noted during the review was the extent to which the EQRO should focus on quality of care.

First, the external independence of the EQRO function should be ensured in fact and appearance to the greatest extent possible. TennCare Bureau staff should certainly be involved in ensuring the factual accuracy in EQRO survey reports. However, with the current framework, TennCare Bureau staff have the ability to censor criticism of the TennCare Bureau's actions, or lack thereof, so that a third-party reader would not recognize that reported problems may be attributable to the TennCare Bureau, and not to the BHOs or MCOs. The possibility that reports could be improperly revised, which is feasible in the current structure established by the TennCare Waiver, guidelines, and state contract, should be carefully reviewed, with the objective of ensuring that the EQRO functions as an effective external and independent review organization in fact and appearance.

Second, if the EQRO reports were intended to be for the benefit of the bureau and were not intended for third-party readers, then clearly the bureau's suggested changes and limitations placed on the scope of the report (removal of references to TennCare Bureau shortcomings) were not deceptive or misleading. The report would have been advising the bureau of already known shortcomings. The current contract provides for the EQRO to report to the bureau (the state) and does not refer to third-party readership other than the federal government. If there is no change to the anticipated audience, similar changes by TennCare Bureau staff would be expected in future reports. If the EQRO, however, is to report to the state as a whole, including third-party readers, and if these reports are revised in the same manner, the reports would appear misleading.

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Given the statewide impact of the TennCare program, it would appear that the EQRO surveyors and the bureau should consider third-party readers.

Finally, quality of care is an important aspect of the EQRO reports and should be reviewed by the EQRO according to the guidelines adopted in the TennCare waiver. Given the perspective, as stated by TennCare Bureau staff, that the surveys function on a continuum, starting with the quality management system and progressing to quality of care, the TennCare Bureau should proceed in a timely manner to adopt performance measures and grievance policies and procedures and to explore means to enable the EQRO to address quality of care.

The attached report includes exhibits of the changed findings, discussion of the changes, and comments from First Health and TennCare Bureau staff regarding the reasons for the changes. It also includes recommendations for improving the survey process to address questions of independence and to broaden the scope of the reviews.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/ct

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Special Report
Department of Health
TennCare Bureau
TennCare Bureau's Alleged Improper Changes to External Survey Report

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Review Objectives

The objectives of the review were to determine through interviews with staff from the TennCare Bureau and First Mental Health, Inc. (First Health) and an analysis of the guidelines and contract between the state and First Health whether (1) changes were made to First Health's survey team's draft, (2) TennCare Bureau staff exerted undue influence to the extent of compromising the independence of First Health, and (3) the final product after the changes would reasonably mislead third-party readers.

RESULTS OF THE REVIEW

The review determined that during April and May 1998, TennCare Bureau staff did review a draft of the First Health's External Quality Review Organization's (EQRO's) draft focus survey report on Tennessee Behavioral Health, Inc. (TBH). TennCare Bureau staff did suggest changes to First Health staff. First Health staff agreed with the changes and adopted them in the final version of the focus survey.

A comparison of the draft focus survey report with the final report disclosed that some of the revisions in question could reasonably be considered by third party readers to materially alter the meaning of five of the sixty-one findings with regard to shortcomings of the TennCare Bureau, TBH, and the TennCare Partners Program. Although the revisions may give the appearance of deliberate changes to a draft report to deflect criticism from the TennCare Bureau, no direct corroborative evidence was found to support the allegations that these changes were outside the boundaries of the contract, were intentionally deceitful, or the result of undue influence. The changes should be considered in the context of the explanations provided by TennCare Bureau and First Health staff and the role of the EQRO survey reports.

With regard to the changes in question, both TennCare Bureau and First Health staff acknowledged that (1) references to proposed policies and procedures and performance measures pending with the TennCare Bureau were removed and that (2) case management statistics were deleted. Both TennCare Bureau and First Health staff strongly denied that any of the changes were inappropriate. Moreover, TennCare Bureau staff stated that they had not exerted undue influence on First Health staff, and First Health staff denied that they were unduly pressured by TennCare Bureau staff. Both TennCare Bureau and First Health staff stated that no changes were intended to deflect criticism away from the TennCare Bureau. It should be noted that none of the interviewees identified the Commissioner of Health, as being involved in any way with reviewing, commenting on, or directing revisions to the EQRO draft survey report in question.

TennCare Bureau staff's explanations for the revisions appear reasonable, given the structure and parameters established in the TennCare waiver, its related guidelines, and the state contract with First Health. These explanations included changing the report format, revising findings to directly address standards, focusing the findings on TBH, deleting unverified case management statistics, and focusing on TBH's quality management system.

Although the contract between the state and First Health for EQRO surveys does not address reviews of drafts by the TennCare Bureau staff, the related guidelines for external quality reviews provide TennCare Bureau staff some latitude in the degree of their involvement in such reviews. However, the contract and the guidelines both indicate a need for a truly independent review. (In this regard, First Health's management stated that they did not consider their role as independent of the TennCare Bureau but rather that of a partner.) Neither the contract nor the guidelines specifically limit the extent of the changes TennCare Bureau staff are allowed to make. One could however presume that a review for factual accuracy would not affect the independence of the EQRO survey reports.

The controversy surrounding the EQRO focus survey report on TBH raises two principal areas of concern: (1) the appropriate structure for the EQRO function to ensure the external and independent role of the surveyors, and (2) the intended readership and scope of the survey reports. In addition, a separate issue noted in the review was the extent to which the EQRO should focus on quality of care.

First, the external independence of the EQRO function should be ensured in fact and appearance to the greatest extent possible. TennCare Bureau staff should certainly be involved in ensuring the factual accuracy in EQRO survey reports. However, with the current framework, TennCare Bureau staff have the ability to censor criticism of the TennCare Bureau's actions, or lack thereof, so that a third-party reader would not recognize that reported problems may be attributable to the TennCare Bureau, and not to the BHOs or MCOs. The possibility that reports could be improperly revised, which is feasible in the current structure established by the TennCare waiver, guidelines, and state contract, should be carefully reviewed, with the objective of ensuring that the EQRO functions as an effective external and independent review organization in fact and appearance.

Second, if the EQRO reports were intended to be for the benefit of the bureau and not intended for third-party readers, then clearly the bureau's suggested changes and limitations placed on the

scope of the report (removal of references to TennCare Bureau shortcomings) were not deceptive or misleading. The report would have been advising the bureau about already known shortcomings. The current contract provides for the EQRO to report to the bureau (the state) and does not refer to third-party readership other than the federal government. If there is no change to the anticipated audience, similar changes by TennCare Bureau staff to future drafts would be expected. If the EQRO, however, is to report to the state as a whole, including third-party readers, and if these reports are revised in the same manner, the reports would appear misleading. Given the statewide impact of the TennCare program, it would appear that the EQRO surveyors and the bureau should consider third-party readers.

Finally, quality of care is an important aspect of the EQRO reports and should be reviewed by the EQRO according to the guidelines adopted in the TennCare waiver. Given the perspective, as stated by TennCare Bureau staff, that the surveys function on a continuum, starting with the quality management system and progressing to quality of care, the TennCare Bureau should proceed in a timely manner to adopt performance measures and grievance policies and procedures and to explore means to enable the EQRO to address quality of care.

“Audit Highlights” is a summary of the audit report. To obtain the complete audit report which contains all findings, recommendations, and management comments, please contact

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The Division of State Audit's review included an analysis of the pertinent contract between the Tennessee Department of Mental Health and Mental Retardation (DMHMR) and First Mental Health, Inc. (First Health). (The contract was transferred to the TennCare Bureau in September 1997 as part of the TennCare Partners Program.) The Medicaid Waiver Application and the attached guidelines for external quality reviews were also analyzed. The Division of State Audit also conducted interviews with management of the TennCare Bureau and First Health, current and former External Quality Review Organization (EQRO) staff members, and the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services. Also reviewed were the Tennessee Behavioral Health (TBH) annual survey, the draft focus survey, and the final focus survey as provided to this office.

BACKGROUND

In 1991, in order to make maximal use of managed care's capabilities in health care quality improvement, the Medicaid Bureau began the Quality Assurance Reform Initiative. This initiative included a framework for a health care quality improvement system for internal quality assurance programs of managed care organizations (MCOs), clinical indicators and practice guidelines, and recommendations for conducting external quality reviews.

In 1993, HCFA published *A Health Care Quality Improvement System for Medicaid Managed Care, A Guide for States*. This publication included guidelines for conducting external quality reviews. In 1994, the TennCare Bureau replaced Medicaid as the provider of medical assistance to both the needy and the uninsured population of Tennessee. TennCare Bureau's replacement of Medicaid was adopted after the federal government approved the state's Medicaid Waiver Application under the authority of section 1115 of the Social Security Act. A requirement of this waiver included external reviews of coordinated care organizations (MCOs and behavioral health organizations or BHOs). The waiver application included provisions for external quality reviews which were extracted from *A Health Care Quality Improvement System for Medicaid Managed Care, A Guide for States*. The State of Tennessee contracted with First Mental Health, Inc., in October 1995, to provide external quality review services pertaining to MCOs. In 1996, the TennCare Partners Program was formed to oversee mental health and addiction treatment services. These services are provided by BHOs. In July 1996, the State of Tennessee contracted with First Mental Health, Inc., to provide EQRO services pertaining to BHOs.

The external quality review in question involved First Health's EQRO focus survey on Tennessee Behavioral Health, Inc. (a BHO) which was conducted in March 1998. This was a follow-up survey to the annual survey the EQRO performed in September 1997. The results of

the previous external quality reviews performed by First Health had been reported to the Tennessee Department of Mental Health and Mental Retardation as well as the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services. Since the state's contract was transferred to the TennCare Bureau in September 1997, this was the first focus survey performed on a BHO to be reported to the TennCare Bureau. The draft of this survey was completed April 14, 1998.

DETAILS OF THE REVIEW

Initial Allegations

The Division of State Audit received allegations that TennCare Bureau staff improperly changed the draft external survey report. The survey was conducted by members of the EQRO who are staff of First Health. The state contracts with First Health to evaluate the quality of health care TennCare enrollees receive. The survey was a follow-up to the annual survey released by First Health in September 1997 and focused on TBH's services for the six-month period October 1, 1997, through March 30, 1998. The allegations were as follows: (1) Changes were made to the survey team's draft. (2) To bring about the changes, TennCare Bureau staff exerted undue influence to the extent of compromising the concept of an independent review contrary to provisions in First Health's contract with the state. (3) The final product after the changes would reasonably mislead third-party readers with regard to the nature and scope of the original findings.

As part of its review, Division of State Audit staff interviewed current and former EQRO survey team members, management-level staff at the Department of Health–TennCare Bureau and First Health, and the state's contact person with the federal Health Care Financing Administration (HCFA). TennCare Bureau staff interviewed included the current Chief Deputy Commissioner for the Department of Health and former TennCare Bureau Director, Ms. Theresa Lindsey; the then acting TennCare Bureau Director and TennCare Medical Director, Dr. Wendy Long; the then Director of Quality Assurance, Ms. Denise Kirsch; and the Manager for Behavioral Health Organization Quality Improvement, Ms. Annette Grossberg. It should be noted that none of the interviewees identified the Commissioner of Health, as being involved in any way with reviewing, commenting on, or directing revisions to the EQRO draft survey report in question.

With reference to First Health, audit staff interviewed the Regional Vice President, Dr. Pate McCartney; the EQRO Director, Ms. Neda Lewis (now former director); and the Manager for Continuous Quality Management, Ms. Mary Hogan. At the time, Ms. Lewis was responsible for both the EQRO managed care organization (MCO) and behavioral health organization (BHO) surveys and Ms. Hogan was involved with the EQRO MCO surveys. Audit staff also reviewed the state's TennCare waiver from HCFA and its related guidelines, as well as the state contract between the Department of Health and First Health.

Review Process for the Focus Survey Draft Report

As can be expected with any review process relating to reading, commenting on, and revising a written draft report, the various individuals interviewed indicated differing levels of

involvement in the review process itself and any associated meetings. State Audit staff determined that during April and May 1998, the TennCare Bureau's Director of Quality assurance, Ms. Kirsch, did review the draft focus survey report and did suggest changes to First Health's EQRO Director, Ms. Lewis. Ms. Clark stated that she didn't recall any specifics about the draft focus survey report in question, but that she did recall being consulted on one issue relating to whether statistics relating to case managers should be deleted from the draft. Dr. Long stated that although she did not specifically recall reviewing the draft or discussing draft-related issues with other bureau staff, she may have been involved at least peripherally. Dr. Long advised the auditors that the suggested changes and communications with First Health staff regarding the suggested changes occurred primarily with the Director of Quality Assurance.

Ms. Lewis told the auditors that she agreed with the proposed changes. Later, Ms. Kirsch and Ms. Lewis, joined at various times by Ms. Grossberg and Ms. Hogan, met with the survey team manager and survey team members to revise the draft. Ms. Kirsch and Ms. Lewis stated that they thought the changes were made through consensus. However, several of the survey team members stated that they objected to the revisions because they believed some of the changes significantly altered several findings by presenting unfavorable information in a more favorable light, deflecting criticism away from the TennCare Bureau, and deleting relevant information.

Applicable Draft Review Criteria

Although the contract for EQRO surveys between the state and First Health does not address reviews of drafts by TennCare Bureau staff, the related guidelines for external quality reviews do provide bureau staff some latitude in the degree of their involvement in such reviews. However, the contract and the guidelines both indicate a need for a truly independent review. Neither the contract nor the guidelines specifically limit the extent of the changes TennCare Bureau staff are allowed to make. One could therefore presume that a review for factual accuracy would not affect the independence of the EQRO survey reports.

Although it is perhaps advantageous for both parties of the contract to have TennCare Bureau staff review drafts for factual accuracy, the pivotal issue in any such survey is the independence of the surveyor. Much of the language in the contract and the HCFA *Guide for States (Guidelines)*, which is included as an attachment to the Medicaid waiver granted to the TennCare Bureau, indicates that the EQRO function was intended to be external and independent of the state. The purpose of such reviews is "to provide the state and federal government with an independent assessment of the quality of health care delivered to TennCare recipients."

Other language taken from the *Guidelines* provides that the findings and recommendations resulting from EQRO studies or reviews "should be reviewed and commented upon jointly by plans (coordinated care organizations) and the State before being finalized," and that "the State may choose to take any degree of involvement it desires in this process." This degree of involvement could, according to the *Guidelines* as adopted by TennCare, include TennCare's "requiring the EQRO to submit its preliminary findings directly to TennCare." TennCare Bureau management construed the language in the *Guidelines* to mean that the bureau had both a right and an obligation to review First Health's draft reports for factual accuracy and to comment and make suggestions about the bureau's concerns.

The Revisions

The draft version of the TBH focus survey, dated April 14, 1998, was provided to this office. It contained sixty-one findings and eight recommendations. Five of the sixty-one findings originally referred to shortcomings of the TennCare Bureau or the TennCare Partners Program. A comparison of the draft with the final report, dated June 3, 1998, shows that these five findings were substantially changed. (Exhibits A, B, C, D, and E are included in this report.) One of the original findings discussed the bureau's failure to develop performance measures, and three findings concerned the bureau's failure to finalize policies and procedures, drafted by TBH. These policies and procedures related to (1) documenting reasons for delays or reductions in services, (2) notifying enrollees of denied services, and (3) publicizing information on appeals mechanisms. The fifth draft finding in question referred to TBH's failure to ensure providers in the program assigned case management services to discharged patients.

One reason the changes concerning the bureau's shortcomings give the appearance of being made to deflect criticism from the TennCare Bureau is that these changes were made soon after critical TennCare Oversight Committee hearings and a March 30, 1998, report by HCFA consultants critical of the TennCare Bureau's corrective actions and financial status.

These five findings in the final report were significantly changed in the following ways:

- The fact that the TennCare Bureau had not finalized the key performance measures was omitted from the final report which stated that the EQRO was unable to evaluate the standard on performance measures.
- The references to the TennCare Bureau were removed from three findings regarding policies and procedures on denial letters, notifications, and appeal mechanisms for patients whose treatment was delayed or reduced. The final version merely stated that the policies and procedures were not finalized.
- The fact that case manager assignments continued to be a deficient area and statistics relating to the lack of assignments were omitted from the final report which stated that the EQRO was unable to assess the impact of the implementation of TBH's Plan of Correction regarding case management statistics.

TennCare Bureau and First Health Responses

With regard to the changes in question, both TennCare Bureau and First Health staff acknowledged that (1) references to proposed policies and procedures and performance measures pending with the TennCare Bureau were removed and that (2) case management statistics were deleted. Both TennCare Bureau and First Health staff strongly denied that any of the changes were inappropriate. Moreover, TennCare Bureau staff stated that they had not exerted undue influence on First Health staff, and First Health staff denied that they were unduly pressured by TennCare Bureau staff. Both TennCare Bureau and First Health staff stated that no changes were intended to deflect criticism from the TennCare Bureau.

TennCare Bureau staff's explanations for the revisions appear reasonable, given the structure and parameters established in the TennCare waiver, its related guidelines, and the state

contract with First Health. First, starting with this focus survey report, the TennCare Bureau changed the format of the BHO focus survey reports to parallel the format of the MCO focus survey reports. Until September 1997, the reviews of BHOs participating in TennCare were performed by First Health under the auspices of the Department of Mental Health and Mental Retardation (DMHMR). At that time, the contract for these services was transferred from DMHMR to the TennCare Bureau as part of the TennCare Partners Program. According to TennCare Bureau staff, format changes necessitated some revisions because the format of the BHO survey reports produced for DMHMR was markedly different from that of the MCO survey reports submitted to the TennCare Bureau. The report in question was the first BHO focus survey report provided to the TennCare Bureau. Second, TennCare Bureau staff indicated that some revisions were suggested to ensure that the findings directly addressed the standards being reported on. Under these circumstances, some adjustment in the format of the report and some language revisions would be expected.

Third, TennCare Bureau staff stated that they regarded the survey report as a report on TBH to the TennCare Bureau, not a report on the performance of the TennCare Bureau itself. Thus, in areas where the TennCare Bureau had already received information and was involved in taking action, such as reviewing proposed policies and procedures and performance measures, TennCare Bureau staff initiated language revisions to delete reference to the TennCare Bureau.

Three changes involved guidelines and policies and procedures that TBH had submitted to the TennCare Bureau. The findings in the draft stated that the TennCare Bureau had not approved the items submitted. Rather than providing this information and the conclusion that the process had not yet been implemented, the finding was reworded, at the suggestion of TennCare Bureau staff, to state that “when finalized, this process will include communicating reasons for the delay or reduction of services and provide the consumer with appeals process information” (Exhibits A, B, and C). Similarly, the reference to the lack of performance measures (Exhibit D) was also removed from the final version. That version indicated that the EQRO was “unable to evaluate this standard, since finalization of performance measures [was] pending.” This change leaves a third-party reader with an incomplete picture—the fact was that the TennCare Bureau, not TBH, had not yet finalized the performance measures. Consequently, the reason the EQRO could not evaluate TBH’s compliance was due to the TennCare Bureau’s unfinished processes. Removal of the references to the TennCare Bureau possibly skews a third-party reader’s perception of the situation.

Finally, with reference to the case management statistics, TennCare Bureau staff stated that they understood the statistics to be self-reported by TBH and unverified by the EQRO surveyors (Exhibit E). They said that they thought it would be inappropriate to include unverified numbers in a focus survey report because such numbers would be misleading to third-party readers. TennCare Bureau staff also said that they had other much worse case management numbers that had resulted in the bureau’s taking action to withhold monies from TBH as a penalty. The former TennCare Bureau Director stated that the removal of these statistics was not intended to conceal information but rather to avoid publishing statistics that were not verified and did not correspond to the statistics the TennCare Bureau had received from the providers. The former director also pointed out that this TBH deficiency was noted in a February 25, 1998, letter from her to the chairman of the Oversight Committee on TennCare.

An additional issue noted during the review was that the quality-of-care issues were not addressed in the TBH focus survey, although the guidelines delineate individual case review as one of the three types of activities to be included in external quality reviews. The remaining two types of activities are focused studies of patterns of care and follow-up activities on previous studies of patterns of care and individual case review. Although the guidelines appear to be patterned for reviews of MCOs, rather than BHOs, and quality reviews on BHOs are in the early stages, the quality of individual care would appear to be important to both the TennCare Bureau and third-party readers. Statistics on re-admissions, follow-up treatment, and average inpatient stay are among the BHO performance measures the TennCare Bureau had not yet finalized at the time of this review. TennCare Bureau staff indicated that the EQRO reports at this time should be focused on the quality management system at the BHOs, not the quality of care provided by the BHOs. Hence, publishing case management statistics would be premature. The rationale was that the quality management system and the quality of care are on a continuum of areas to be reviewed. An aspect of the rationale is that the EQRO should start by reviewing the quality management system and proceed to quality of care concerns once the quality management system has been thoroughly reviewed and deficiencies corrected.

Interview with Ms. Rose Hatten, HCFA Contact Person for Tennessee

On December 1, 1998, audit staff interviewed Ms. Rose Hatten by telephone. Ms. Hatten stated that she declined to comment on the appropriateness of the changes from the draft to the final report because she did not have sufficient background information on which to base an opinion. She also stated that she could not speak for HCFA. She did indicate that in her opinion HCFA does have an oversight role over the TennCare Program, and that any information related to the performance of the program would be of interest to HCFA. She further stated that a quality of care review is an expected component of the EQRO function, but that HCFA has not specified any standard or generic approach to such reviews. Instead, great flexibility has been accorded to the states for developing such processes.

Conclusion

As noted above, a comparison of the draft focus survey report to the final report disclosed that some of the revisions in question could reasonably be considered by third-party readers to materially alter the meaning of five of the sixty-one findings with regard to shortcomings of the TennCare Bureau, TBH, and the TennCare Partners Program. Although the revisions may give the appearance of deliberate changes to a draft report to deflect criticism from the TennCare Bureau, no direct corroborative evidence was found to support the allegations that these changes were outside the boundaries of the contract, were intentionally deceitful, or the result of undue influence. The changes should be considered in the context of the explanations provided by TennCare Bureau and First Health staff and the role of the EQRO survey reports.

RECOMMENDATIONS

The controversy surrounding the EQRO focus survey report on TBH raises two principal areas of concern: (1) the appropriate structure for the EQRO function to ensure the external and independent role of the surveyors, and (2) the intended readership and scope of the survey

reports. In addition, a separate issue noted in the review was the extent to which the EQRO should focus on quality of care.

First, the external independence of the EQRO function should be ensured in fact and appearance to the greatest extent possible. TennCare Bureau staff should certainly be involved in ensuring the factual accuracy of EQRO survey reports. However, with the current framework, TennCare Bureau staff have the ability to censor criticism of the TennCare Bureau's actions, or lack thereof, so that a third-party reader would not recognize that reported problems may be attributable to the TennCare Bureau, not to the BHOs or MCOs. The possibility that reports could be improperly revised, which is feasible in the current structure established by the TennCare waiver, guidelines, and state contract, should be carefully reviewed, with the objective of ensuring the EQRO functions as an effective external and independent review organization in fact and appearance.

Second, if the EQRO reports were intended to be for the benefit of the bureau and were not intended for third-party readers, then clearly the bureau's suggested changes and limitations placed on the scope of the report (removal of references to TennCare Bureau shortcomings) were not deceptive or misleading. The report would have been advising the bureau of already known shortcomings. The current contract provides for the EQRO to report to the bureau (the state) and does not refer to third-party readership other than the federal government. If there is no change to the anticipated audience, similar changes by TennCare Bureau staff would be expected in future reports. If the EQRO, however, is to report to the state as a whole, including third-party readers, and if these reports are revised in the same manner, the reports would appear misleading. Given the statewide impact of the TennCare program, it would appear that the EQRO surveyors and the bureau should consider third-party readers.

Finally, quality of care is an important aspect of the EQRO reports and should be reviewed by the EQRO according to the guidelines adopted in the TennCare waiver. Given the perspective, as stated by TennCare Bureau staff, that the surveys function on a continuum, starting with the quality management system and progressing to the quality of care, the TennCare Bureau should proceed in a timely manner to adopt performance measures and grievance policies and procedures and to explore means to enable the EQRO to address quality of care.

STANDARD/ELEMENT 87**Performance and Outcome Measures****DRAFT** Focus Survey Finding

~~“The Bureau of TennCare has not finalized the Key Performance Measures or amended the Performance Measures requirements in the Provider Risk Contract between the TDMHMR and the BHOs. Until one of these actions occurs or the Bureau waives this standard, TBH will continue to be cited for not meeting the requirements of this Standard.”~~

FINAL Focus Survey Finding

“The EQRO is unable to evaluate this standard at this time, since finalization of the Performance Measures is pending.”

STANDARD/ELEMENT 3.6

The BHO clearly documents and communicates the reason for each denial.

DRAFT Focus Survey Finding

“TBH has submitted draft guidelines to both TennCare and the [Community Mental Health Centers] to address delays in service and the potential inability of CMHCs to follow certain ‘prescriptions of care’ from inpatient providers. ~~Once these guidelines/policies are approved by TennCare,~~ the CMHCs will be instructed to issue denial letters and appeal process information whenever there will be a delay in receiving specific services or the ‘prescribed’ levels of care are not available to the consumer. ~~This process has not yet been implemented, and thus remains a deficient area.~~”

FINAL Focus Survey Finding

“In addition to previously approved denial procedures, TBH has drafted policies and procedures to address situations in which a consumer may experience a delay in care or be offered a different level of care than originally prescribed at the [Community Mental Health Centers]. When finalized, this process will include communicating reasons for the delay or reduction of services and provide the consumer with appeals process information.”

STANDARD/ELEMENT 3.6.1**Notification of a denial includes appeal process information****DRAFT** Focus Survey Findings

“See 3.6”

“TBH has submitted draft guidelines to both TennCare and the CMHCs to address delays in service and the potential inability of CMHCs to follow certain ‘prescriptions of care’ from inpatient providers. ~~Once these guidelines/policies are approved by TennCare,~~ the CMHCs will be instructed to issue denial letters and appeal process information whenever there will be a delay in receiving specific services or the ‘prescribed’ levels of care are not available to the consumer. ~~This process has not yet been implemented, and thus remains a deficient area.~~”

FINAL Focus Survey Findings

“In addition to the appeals process provided for service denials, TBH staff state that appeals process information will be provided in cases where there is a delay or reduction in prescribed services. This process is pending finalization of the procedures in 3.6 and the guidelines for utilization of the full spectrum of services provided by the Community Mental Health Centers.”

STANDARD/ELEMENT 3.7**Well publicized and readily available appeal mechanisms for providers and consumers****DRAFT** Focus Survey Findings

“See 3.6”

“TBH has submitted draft guidelines to both TennCare and the CMHCs to address delays in service and the potential inability of CMHCs to follow certain ‘prescriptions of care’ from inpatient providers. ~~Once these guidelines/policies are approved by TennCare,~~ the CMHCs will be instructed to issue denial letters and appeal process information whenever there will be a delay in receiving specific services or the ‘prescribed’ levels of care are not available to the consumer. ~~This process has not yet been implemented, and thus remains a deficient area.~~”

FINAL Focus Survey Findings

“Once the additional policies, procedures, and guidelines are finalized, appeal mechanisms for consumers accessing services at the CMHCs will be made available to providers and consumers.”

STANDARD/ELEMENT 13.2.2

Individuals discharged from psychiatric inpatient facilities and residential treatment facilities must be assigned a Mental Health Case Manager.

DRAFT Focus Survey Finding

“Inpatient providers and CMHCs have been educated regarding the necessity of assigning Mental Health Case Managers to consumers discharged from psychiatric inpatient facilities, unless a refusal form has been signed. ~~This standard continues to be deficient, though TBH has documented progress in this area.~~

~~December — 614 discharges
— 32% with Case Management
— 03% Refused
— 65% with no Case Management or signed refusal form
January — 493 discharges
— 32% with Case Management
— 07% Refused
— 61% with no Case Management or signed refusal form
February — 642 discharges
— 45% with Case Management
— 10% Refused
— 45% with no Case Management or signed refusal form”~~

FINAL Focus Survey Finding

“Inpatient providers and CMHCs have been educated regarding the necessity of assigning Mental Health Case Managers to consumers discharged from psychiatric inpatient facilities, unless a refusal form has been signed. At the time of the survey, the EQRO was unable to assess the impact of the implementation of the Plan of Correction.”